

United States District CourtEASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA

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vs.

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ALBERT DWAYNE PARKER

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FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SEP 12 2006
BY DAVID J. MALAND, CLERK
DEPUTYCase No. 4:01CR44
(Judge Brown)**REPORT AND RECOMMENDATION**
OF UNITED STATES MAGISTRATE JUDGE

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on September 5, 2006, to determine whether the Defendant violated his supervised release. The Defendant was represented by a Federal Public Defender. The Government was represented by Maureen Smith.

On March 28, 2002, the Defendant was sentenced by the Honorable United States District Judge Paul Brown to 60 months imprisonment followed by a 4-year term of supervised release for the offense of Conspiracy to Manufacture, Distribute, or Possess with Intent to Manufacture, Distribute, of Dispense, or Dispense Methamphetamine. On August 15, 2005, Defendant began his supervised release.

On August 30, 2006, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender Under Supervision. The petition asserted that the Defendant violated the following conditions: (1) Defendant shall not commit another federal, state, or local crime; (2) Defendant shall refrain from any unlawful use of a controlled

substance; (3) Defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer; (4) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribe by a physician; (5) Defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month; (6) Defendant shall pay a fine in the amount of \$4,000, with payments to begin immediately; (7) Any amount of the fine that remains unpaid when Defendant is placed on supervision is to be paid on a monthly basis at the rate of at least 10% of the Defendant's monthly gross income to be changed during the supervision if needed, based on the defendant's changed circumstances; (8) Defendant shall participate in a program of testing and treatment for drug abuse, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer.

The petition alleges Defendant committed the following acts: (1) On February 14, 2006, Defendant was arrested and charged with Unauthorized Use of a Motor Vehicle by the Grayson County Sheriff's Office and remains in custody unable to make bond; (2) On July 20, 2006, Defendant plead guilty to the charge and was sentenced to 180 days in a state jail facility; (3) On November 10, December 5, 17, 20, and 27, 2005, and January 19 and 26, 2006, Defendant submitted urine specimens that tested positive for methamphetamine; (4) Defendant failed to submit

a written monthly report for the months of November 2005, and January 2006; (5) Defendant failed to report to the office in January 24, 2006, as instructed; (6) Defendant failed to make a fine payment for the months of September, November, and December, 2005, and January, 2006 with a balance of \$3,620; (7) Defendant failed to attend his counseling session on November 22, 2005, and did not contact the treatment center to reschedule; (8) Defendant failed to schedule and attend his weekly counseling sessions for the first three weeks of the month of December 2005, and only attended one session on December 29, 2005; and (9) Defendant failed to report for random drug testing on November 21 and 23, 2005, and December 14, 2005.

Prior to the Government putting on its case, the Defendant entered a plea of true to the above listed violations. At the hearing, the Court recommended that the Defendant's supervised release be revoked.

RECOMMENDATION

The Court recommends that the District Court revoke Defendant's supervised release. Pursuant to the Sentencing Reform Act of 1984, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of fourteen (14) months, to be served consecutively to any other sentence, with thirty-four (34) months of supervised release to follow. If Defendant pays the fine within the first twelve (12) months of supervised release, the total term of supervised release shall be reduced to twelve (12) months and credit shall be given to the months preceding the payment of the fine.

Signed this 12 day of ~~August~~, 2006.

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DON D. BUSH
UNITED STATES MAGISTRATE JUDGE